FIRST AMENDMENT TO LANDFILL DEVELOPMENT AGREEMENT

This First Amendment to Landfill Development Agreement (the "Amendment") is hereby entered into and effective as of December 5, 2016, by and between Hanson Aggregates Pacific Southwest, Inc., a Delaware corporation ("Hanson") and Sycamore Landfill, Inc., a California corporation ("SLI," collectively, the "parties").

RECITALS

A. South Coast Materials Company, a California corporation, as predecessor to Hanson, and SLI entered into that certain Landfill Development Agreement dated as of December 31, 2006 ("Development Agreement," together with this Amendment, the "Agreement").

B. When the parties entered into the Development Agreement, they contemplated that Hanson's payment of the Fixed Royalty in Section 3.2 of the Development Agreement would equally balance with SLI's payment of the Extraction Fee in Section 4 of the Development Agreement. In and around December 31, 2008, the parties determined that the Fixed Royalties and the Extraction Fees were not equally balancing as contemplated. Fixed Royalties paid by Hanson were substantially more than the Extraction Fees paid by SLI.

C. On or about December 31, 2008, SLI contends that the parties agreed to temporarily suspend Hanson's obligation to pay the Fixed Royalties to SLI and agreed that the parties would reassess the Fixed Royalty provision in the Development Agreement in the future. Hanson contends that currently SLI owes Hanson $2,453,477 ("Extraction Fees Receivables Balance"), which represents the difference between the total Fixed Royalties paid by Hanson ($8,280,920) and the total Extraction Fees paid by SLI ($5,827,442) under the Development Agreement. SLI disputes these contentions.

D. On or about November 20, 2014, SLI provided notice to Hanson that SLI required Hanson to relocate its equipment to another location on the Property. Hanson incurred $3,410,665.80 of costs to relocate its equipment ("Relocation Costs"). Pursuant to Section 6.1 of the Development Agreement, SLI is obligated to pay Hanson $1,591,644.04 ("SLI Relocation Obligation") – which represents 7/15ths of the Relocation Costs.

E. On or about November 20, 2014, SLI determined that it needed Hanson to substantially increase its rate of excavation of the Material from the Property. SLI contends that it anticipated that, as of December 2015, Hanson would have excavated a total of 16 million cubic yards of Materials, and SLI contends that Hanson has excavated slightly over 3.1 million cubic yards of Materials as of December 2015. Hanson disputes these contentions.

F. SLI hired and paid a contractor, Rumco, in 2014 to excavate the Material from the Property ("Contractor Excavation Cost"). SLI has been and will be providing such excavated Material to Hanson, and Hanson will pay SLI the Production Royalty Rate for the saleable Aggregates contained in such excavated Material.

G. On or about March 18, 2016, SLI requested that Hanson relocated certain utility

lines to another location on the Property. Hanson contends that pursuant to Section 6.1 of the Development Agreement, SLI will be obligated to pay Hanson 5/15ths of the total cost to relocate the utility lines ("Utility Relocation Cost"), the total cost of which is estimated to be about $750,000.

H. SLI wishes to induce Hanson to accelerate its excavation rate, and the parties wish to resolve their current disputes and to that end, Hanson and SLI desire to amend the Development Agreement on the terms set forth herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing Recitals, and the mutual covenants contained herein, and for such other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby expressly acknowledged by each of Hanson and SLI, and intending to be legally bound hereby, Hanson and SLI hereby specifically covenant and agree as follows:

1. Amendments to Development Agreement:

(a) Recital B of the Development Agreement shall be amended in its entirety to read: "The parties estimate that there are thirty four million two hundred thousand (34,200,000) cubic yards of material to be extracted from the Property (the "Material"). Of this Material, forty percent (40%) is estimated to be saleable aggregates (the "Aggregates") with the remainder being material that is not saleable aggregates (the "Fine Material")." All references to "fine material" in the Development Agreement shall mean "Fine Material."

(b) Section 2 of the Development Agreement shall be amended in its entirety to read as follows:

> "Unless earlier terminated as provided herein, the term of this Agreement shall begin on the effective date of this Agreement and terminate on December 31, 2033 ("Initial Term"). Notwithstanding the foregoing, Hanson shall have five (5), one (1) year options to extend the Term for the period of time between January 1, 2034 and December 31, 2038. "Term" shall mean the Initial Term and any exercised option to extend the Term. To exercise each such option, Hanson must give SLI a minimum of one hundred and twenty (120) days' written notice before the end of each term.
>
> Subject to an extension granted to Hanson pursuant to Section 9.6, Hanson agrees: (i) to complete this mining project within the Initial Term and in accordance with the excavation schedule and Mining Plan attached hereto as Exhibit F, and (ii) if Hanson exercises one or more options to extend the Term, Hanson and SLI shall meet and confer in good faith to determine if agreement can be reached on an excavation schedule and Mining Plan for such option periods. If the parties cannot reach agreement on a revised excavation schedule and Mining Plan, then either

party may terminate this agreement on one hundred twenty (120) days' notice to the other party.

As provided in Section 9.5, the Term may be extended if the parties mutually agree for additional phases on the Property."

(c) The following sentences shall be added to Section 3.3 of the Development Agreement, "Production Royalty":

"Notwithstanding the foregoing, starting on January 1, 2017, regardless of the amount of Aggregate removed from the Property and sold by Hanson each Year, Hanson shall pay SLI a minimum Production Royalty of Five Hundred Thousand Dollars ($500,000.00) per Year ("Minimum Annual Production Royalty"), provided however that Hanson shall be allowed to "bank" any Production Royalty paid in any Year that exceeds the Minimum Annual Production Royalty to be applied towards satisfaction of the Minimum Annual Production Royalty for a maximum of three subsequent Years. For example, if in year 1, Hanson pays a Production Royalty of $750,000; in year 2, Hanson pays a Production Royalty of $500,000; in year 3, Hanson pays Production Royalty of $300,000; and in year 4 Hanson pays a Production Royalty Payment of $600,000, then Hanson shall not be obligated to pay any additional Production Royalties in year 1 (because $750,000 Production Royalty exceeded the Minimum Annual Production Royalty); or in year 2 (because $500,000 is the Minimum Annual Production Royalty; or in year 3 (because Hanson banked $250,000 from year 1 and applied $200,000 of such banked amount to satisfy the Minimum Annual Production Royalty for year 3); or in year 4 because the $600,000 Production Royalty payment exceeded the Minimum Annual Production Royalty. But in Year 5, Hanson will have no further "banked" credits eligible from Year 1 and will only have the $100,000 banked credit (available from its year 4 payment in excess of the Minimum Production Royalty) to offset against the Minimum Production Royalty in year 5, because there is a three year limit on the carry forward or "banking" of payments in excess of the Minimum Annual Production Royalty.

Any shortfall in the annual Production Royalty paid and the Minimum Annual Production Royalty shall be paid by Hanson to SLI within thirty (30) days of the end of the Year. The Minimum Annual Production Royalty will escalate each Year by the same percentage adjustment as applied to the per-ton Production Royalty. "Year" shall mean a 12-month calendar year. For any partial Year during the Term, the Minimum Annual Production Royalty shall be pro-rated based on a 365-day Year."

(d) Sections 3.2, "Fixed Royalty," 4 "Extraction Fee," and Exhibit E of the Development Agreement shall be deleted in their entirety.

(e) Section 3.3 shall be amended in its entirety to read as follows:

"(a) Subject to the adjustment provided in Section 3.3(b), Hanson shall pay a royalty of Eighty-Six Cents ($.86) per ton of Aggregates as a production royalty during the Term of this Agreement (as adjusted, the "Production Royalty Rate"). Such royalties are due thirty-five (35) days after the end of the month in which the Aggregates are sold by Hanson.

(b) Beginning on January 1, 2017, and each January 1st thereafter during the Term, the Production Royalty Rate shall be an amount equal to the amount in effect in the immediately preceding Year increased by a percentage equal to the greater of: (a) the percent increase, if any, in the PPI during the most recent twelve month period for which such data is available or (b) the year over year percentage increase in the average selling price to all third parties (excluding Hanson's Affiliates) of Aggregates produced or sold at or from the Property. The increase in the average sales price per ton shall be calculated as follows: (1) the prior Year's average selling price shall be calculated as the per ton price received by Hanson during the twelve month period ending one full year before the January 1 royalty recalculation date, by averaging the per ton price received by Hanson during that twelve month period and giving equal weight to the price of each ton sold, compared with (2) the average selling price, similarly calculated, received by Hanson during the twelve month period immediately preceding the January 1 royalty recalculation date. "Affiliate" means any business entity that directly or indirectly is in control of, is controlled by, or is under common control of such business entity.

(c) The term "PPI" means the United States Department of Labor, Bureau of Labor Statistics, Producer Price Index for Construction sand, gravel, and crushed stone (commodity code 13-21) on the basis of 1982 = 100. If the format or components of the PPI are materially changed after the execution of this Agreement, the parties shall substitute an index which is published by the Bureau of Labor Statistics, or a similar agency, and which in the parties' judgment, is equivalent to the PPI in effect on the date of this Agreement.

(d) The Parties will review and monitor market conditions to determine if the Production Royalty Rate fairly represents and compensates SLI during the duration of the Term. The review is designed to address unique price improvement conditions (for example, >300% improvement in average selling price of Aggregates from the Property), and restructure the Production Royalty Rate to reflect those circumstances. Any changes will be discussed and modified only if approved by both Parties."

(f) Section 5, "Quantity and Quality of Materials," of the Development Agreement is amended in its entirety to read as follows:

(a) It is a material term and condition of this Agreement that Hanson excavate sufficient native (i.e., not stockpiled) Material (saleable or not) ("Native Material") to meet the excavation schedule and adhere to the Mining Plan set

forth in Exhibit F to this Amendment. This is necessary to enable SLI to prepare additional air space for disposal at the landfill. Therefore, Hanson agrees to excavate, at a minimum, the quantity of Material described for each month or annual period (stated in Exhibit F) and at the designated areas at the Property, as set forth in Exhibit F hereto.

(b) Title to the saleable Aggregates shall pass to Hanson upon excavation of such saleable Aggregates from the Property; provided, however, that upon the expiration of Term of the Development Agreement as amended herein, legal title and ownership to all saleable Aggregates and all other excavated materials remaining on the Property, if any, shall revert to and be deemed solely vested in SLI. SLI may thereafter sell such saleable Aggregates and shall retain all proceeds thereof.

(c) Notwithstanding the foregoing, SLI is obligated to excavate Fine Materials that Hanson previously conveyed to SLI pursuant to Section 6.3 of the Development Agreement and SLI placed in an area that Hanson must excavate pursuant to the Mining Plan ("Previously Removed Fine Material"). Such materials excavated by SLI shall not count towards Hanson's excavation obligations in Exhibit F or the Mining Plan. "Fine Materials" shall mean the portion of the Material that is not composed of saleable Aggregate."

(g) Section 6.2, "Mining Plan," is amended in its entirety to read as follows:

"Hanson shall adhere to the Mining Plan attached hereto as Exhibit F unless the parties agree otherwise, in a writing signed by both parties. In addition, on or about September 1st of each year of the Agreement, SLI shall provide Hanson with copies of Landfill development plans detailing the specific location of Landfill development needed for the upcoming calendar year along with the Landfill development progression anticipated over the next five-year period. SLI's plans shall include engineering estimates of quantities of Material to be removed along with details regarding any and all permit limitation and/or restriction that would impact Hanson's ability to perform under this Agreement. Hanson shall use the Mining Plan to develop the anticipated Cost of Extraction ("Cost") for removing and processing Material. Except as expressly provided in Section 5(c), all said Cost shall be the sole responsibility of Hanson and shall include the cost of excavation and transportation and disposal of fines into the Designated Fines Materials Conveyance Area (except the Previously Removed Fine Material). Nothing in this Agreement shall prohibit SLI from the following activities: (i) excavation, extraction, drilling, and blasting of Material, (ii) placing liners in all or a portion of the Property, (iii) stockpiling Material, or (iv) doing any other activity reasonably necessary for SLI to timely and effectively operate its landfill according to its permits; provided, however, that (x) SLI will extract Material as reasonably practical to preserve the Aggregates for extraction by Hanson."

(h) In Section 6.1, "Labor and Equipment", the second sentence shall be replaced in its entirety with the following:

> "In the event SLI requires Hanson to relocate any or all of the equipment or utilities sooner than 24 months before the end of the Initial Term, then SLI shall pay to Hanson the pro-rata share of the relocation expenses based on a straight-line depreciation over the total years in the Initial Term. For example, if SLI requires Hanson to relocate equipment in July 2029, then SLI would be obligated to pay Hanson 4/17th of the relocation cost or, in lieu of such payment, Hanson may then elect to terminate the agreement on 120 days' written notice to SLI."

(i) The following sentences shall be added to Section 6.3, "Removal of Fines":

> "Hanson shall also, at its sole expense, convey Fine Materials to the pit designated on Exhibit G (the "Additional Fine Materials Area") until the Additional Fine Materials Area is filled to its capacity. "Filled to its capacity" shall mean non-engineered placement of material up to the approximate elevation of 810 ft. Hanson shall be responsible for the costs to convey and place the Fine Materials into the Additional Fine Materials Area. When the "Additional Fine Materials Area" is filled to its capacity, the parties shall meet and confer on an alternate location for the Fine Materials ("Alternative Fine Materials Area"). Hanson shall convey Fine Materials to the Alternative Fine Materials Area. Hanson shall only be responsible for the cost to convey fines to the Alternative Fine Materials Area up to the average annual capital and operating costs incurred by Hanson to convey Fine Materials to the Additional Fine Material Area ("Hanson's Conveyance Obligation"). Hanson's Conveyance Obligation shall be determined by adding up the following marginal costs incurred by Hanson to convey fines to the Additional Fine Materials Area: labor, power, fuel, equipment (e.g., dozer, loader, haul trucks), and capital costs such as conveyor extensions. These costs will then be calculated on a per cubic yard basis using the volume of materials conveyed to the Additional Fine Material Area. The resulting average per cubic yard cost shall be the Hanson Conveyance Obligation. Following the Year in which the Hanson Conveyance Obligation is first calculated, the Hanson Conveyance Obligation shall be escalated annually thereafter by the percent increase, if any, in the PPI during the most recent twelve month period for which such data is available.
>
> Hanson shall review its Fine Material conveyance costs per cubic yard with SLI in September of each year during the Term, and shall allow SLI to audit Hanson's books and records to verify all such costs. SLI shall be obligated to pay for the costs incurred by Hanson to convey the Fine Materials to the Alternative Fine Material Area in excess of the Hanson Conveyance Obligation. SLI shall pay Hanson such amount within thirty (30) days following issuance of an invoice by Hanson to SLI.

If Hanson requires the placement of structural fill in connection with their operations during the Term of this Agreement, this fill will be constructed in accordance with engineering specifications for structural fill placement provided by SLI and attached hereto as Exhibit H, and shall be paid for by Hanson.

(j) Section 6.4, "Progress Meetings and Reports," is amended in its entirety to read as follows:

"Hanson shall provide SLI with a monthly report stating the total quantity of Material excavated by Hanson during the prior month. This report shall be delivered to Republic no later than the tenth business day of the following month. Further, unless the parties agree otherwise, Hanson and SLI shall meet monthly to review Hanson's progress towards meeting the excavation schedule requirements in Exhibit F and, if agreed to by both parties in a writing signed by both parties, may amend or update the schedule and/or the Mining Plan.

Following Phase 1 and 2 of the Mining Plan, Hanson shall excavate at the minimum rate of 750,000 cubic yards per Year of Native Material. This requirement may be waived annually by SLI, in SLI's sole discretion. Such waiver, if requested by Hanson, shall be discussed at the annual meeting described in Section 6.2 of the Agreement. If given by SLI, SLI shall provide Hanson any such waiver in writing.

If it is determined that Hanson is not making "Adequate Progress" based on the Mining Plan in Exhibit F and the annual excavation requirements after the completion of Phases 1 and 2 described herein, and as these requirements may be amended in writing by the Parties from time to time, SLI may, at is option, provide written notice to Hanson of the shortfall in excavation and shall allow Hanson to cure the shortfall in full within 60 days of Hanson's receipt of such notice. "Adequate Progress" shall mean (A) 200,000 cubic yards per month during Phase 1 of the Mining Plan in Exhibit F, or (B) 125,000 cubic yards per month during Phase 2 of the Mining Plan in Exhibit F, or (C) following Phase 1 and 2 of the Mining Plan, 50,000 cubic yards per month. If the shortfall is not cured by the end of such 60-day period, SLI may, at is sole option and discretion, hire a third party contractor at the expense of Hanson to reach the level of Adequate Progress, provided however that Hanson may continue to excavate the Property in conjunction with such third party contractor. During the period that SLI's third party contractor is excavating on the Property, Hanson shall not unreasonably interfere with the excavation plans and activities of SLI's third party contractor. Hanson shall reimburse SLI, within thirty (30) days of invoice receipt, for SLI's reasonable out-of-pocket costs of hiring such third party contractor to reach the level of Adequate Progress."

(k) Section 9.6 of the Development Agreement shall be amended to replace "in 17 years" with "the Term.

2. Extraction Fees and Fixed Royalties.

(a) Hanson waives, and SLI shall not be obligated to pay Hanson, the Extraction Fees Receivables Balance. SLI waives, and Hanson shall not be obligated to pay SLI, the Contractor Excavation Cost.

(b) Hanson waives any and all right to, and SLI shall no longer be obligated to pay Hanson, any Extraction Fees for the remaining Term. SLI waives any and all right to, and Hanson shall not be obligated to pay SLI, any Fixed Royalties under the Development Agreement.

3. SLI Relocation Obligations.

(a) SLI shall pay Hanson the $1,591,644.04 SLI Relocation Obligation on or before December 31, 2016.

(b) SLI shall pay Hanson the Utility Relocation Cost within 60 days of Hanson's issuance of an invoice for such cost to SLI.

4. Conflicts; No Other Amendment. In the event of a conflict between the provisions of this Amendment and the provisions of the Development Agreement, the provisions of this Amendment shall control. Capitalized terms not defined herein shall refer to the definitions of such terms in the Development Agreement. Except as expressly set forth in this Amendment, the provisions of the License remain in full force and effect.

5. Miscellaneous.

(a) Authority. Each signatory of this Agreement represents and warrants that he or she has full authority to enter into this Amendment on behalf of the respective parties.

(b) Entire Agreement. This Amendment, together with the Development Agreement, represents the entire understanding and agreement between Hanson and SLI with respect to the subject matter hereof, and no amendment or modification of this Agreement shall be effective unless it is set forth in a writing specifically stating that it is intended to be an amendment hereof, specifying what provision hereof is being amended thereby, and signed by each of the parties. This Amendment resolves all reciprocal payment obligations of the Parties arising prior to the date of execution of this Amendment arising under sections 3, 4 and 6.1 of the Development Agreement, and establishes the reciprocal payment obligations of the Parties relating to the matters covered by these sections from and after the date of execution of this Amendment, unless this Amendment expressly provides otherwise.

(c) No Third Party Beneficiaries. Nothing in this Amendment, express or implied, is intended or shall be construed to confer upon, or give to, any person, other than the named parties to this Amendment, any rights, remedies, obligations or liabilities.

(d) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same Amendment. The parties contemplate that they may be executing counterparts of this Amendment transmitted by facsimile or email in PDF format and agree and intend that a signature by facsimile machine or email in PDF format shall bind the party so signing with the same effect as though the signature was an original signature. Hanson and SLI shall execute and deliver such additional documents and take such additional actions as either may reasonably request to carry out the purposes of this Amendment.

(e) Severability. If any term or provision of this Amendment is invalid, illegal, or incapable of being enforced by virtue of any federal or state law, or public policy, all other terms and provisions of this Amendment shall nevertheless remain in full force and effect so long as the legal substance of the transaction contemplated hereby is not affected in any manner materially adverse to any of the parties to this Amendment. Upon such determination that any such term or provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Amendment so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

IN WITNESS HEREOF, Hanson and SLI have executed this Agreement intending it to be effective as of the date first written above.

HANSON AGGREGATES PACIFIC SOUTHWEST, INC., a Delaware corporation

By: Chris Hobby

Name: Chris Hobby

Title: VP GM

Date: 12/5/16

SYCAMORE LANDFILL, INC., a California corporation

By: Heath Eddleblute

Name: Heath Eddleblute

Title: Vice President

Date: 12/5/16

EXHIBIT F

Mining Plan and Excavation Schedule

- Excavate MPC-1 Phase 1, approximately 2.2 million cubic yards, of Native Material during the eight (8) month period starting on Phase 1 Commencement Date (the "Phase 1 Excavation"). See drawing number 1.
    - Phase 1 Commencement Date shall be September 1, 2016, unless SLI provides Hanson advance notice of a delay in the Phase 1 Commencement Date.
    - Assuming that the Phase 1 Commencement Date begins on September 1, 2016, the Phase 1 Excavation shall be completed by no later than April 30, 2017.
    - Minimum excavation rate will be 200,000 cubic yards per month starting on Phase 1 Commencement Date.
    - Excavated material to be stockpiled in area shown on drawing number 1.

- Complete excavation of remaining area of MPC-1, approximately 2.4 million cubic yards of Native Material, during the twenty (20) month period starting on the Phase 2 Commencement Date, unless SLI provides Hanson advance notice of a delay such of commencement. See drawing number 2.
    - Phase 2 Commencement Date shall be the day following the conclusion of the Phase 1 Excavation.
    - Minimum excavation rate will be 125,000 cubic yards per month.
    - Excavated material to be stockpiled in area shown on drawing number 2.

- Following Phase 1 and 2 of the Mining Plan, Hanson shall excavate at the minimum rate of 750,000 cubic yards per Year of Native Material. See drawing number 3 for remaining landfill footprint excavation. Stockpile locations for future excavated material and additional fines material to be determined as the landfill development progresses.

County of San Diego

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May 2, 2017

Stephen J. O'Neil
Sheppard Mullin Richter & Hampton
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422

VIA EMAIL AND U.S. MAIL

Re: Hanson Aggregates Pacific Southwest, Inc.- Santee Title V Issues

Dear Stephen:

Thank you for your letter of March 15, 2017. I have reviewed your letter as well as the Landfill Development Agreement ("Agreement") and the First Amendment ("Amendment") to that Agreement which you provided. As a preliminary matter, the District will agree to protect the information in Exhibit B, C, and D, as trade secret information. If a public records act request is submitted asking for these materials, the District will follow the procedures prescribed in District Rule 177(g) prior to releasing those materials. Additionally, for the reasons discussed below, we do not require the pricing and billing information that you offered to submit as Exhibits C and D. You may choose to submit that information at a later time, but we do not find it necessary to determining whether the Hanson Aggregates Pacific Southwest Inc. operation of the Hanson Santee Aggregate Plant ("Hanson Santee") at Sycamore Landfill should be aggregated with the operations of the landfill itself.

From the review of the Agreement and Amendment, and in consideration of your letter, the District finds that Hanson Santee and Sycamore Landfill should be considered a single stationary source for purposes of Title V permitting. The following are the reasons for this conclusion.

I. Hanson Santee and Sycamore Landfill meet the definition of a single stationary source under District Rule 1401.

For purposes of permitting under Title V, a stationary source is defined as "an emission unit, or aggregation of emission units which are located on the same or

contiguous properties and which units are under common ownership or entitlement to use." District Rule 1401(c)(46). As we discussed in our phone call of September 15, 2016, the District interprets the phrase "entitlement to use" to be the same as "common control" which is extensively discussed in federal Environmental Protection Agency ("EPA") letters related to stationary source determinations[1]. Thus, there are two prongs to identifying a stationary source under the District Title V Rules: location on a contiguous parcel, and entitlement to use (common control).

A. The Hanson Santee and Sycamore Landfill operations are located on a contiguous parcel.

There is no dispute that the Hanson Santee operations are located on the same parcel as the Sycamore Landfill operations. In fact, what is apparent from the aptly named Landfill Development Agreement submitted as Exhibit B is that Hanson Santee is located upon and was contracted to excavate the landfill itself, as well as provide the daily cover for the landfill.

B. There is clearly common control between the parties as reflected in the Agreement and Amendment.

As the EPA has long noted, "Typically, companies don't just locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with one another. Therefore, we presume that one company locating on another's land establishes a "control" relationship." Letter from William A. Spratlin, Director, Air, RCRA, and Toxics Division to Peter R. Hamlin, dated September 18, 1995. This presumption is rebuttable, so it is important to look at the contractual relationship between Hanson Santee and the Sycamore Landfill to determine whether common control exists.

As repeatedly stated in EPA determination letters, EPA has no adopted regulatory definition of "common control". Instead, "... the Agency has relied on the common definition. Webster's Dictionary defines *control* as 'to exercise restraining or directing influence over,' 'to have power over,' 'power of authority to guide or manage,' or if it [regulates] economic activity." Letter from Matt Haber, Chief, Permits Office, to Jennifer B. Schlosstein, dated November 27, 1996. The Spratlin letter referenced above includes a list of screening questions often employed in analyzing the operations of

[1] However, to clear up any confusion from our call, I did not indicate that the District interpreted "entitlement to use" as also encompassing the concept of common SIC code, contrary to the assertion in your letter. As will be discussed below, however, under either the federal or local definition of stationary source, the Hanson Santee operations must be aggregated with the Sycamore Landfill.

sources to determine whether common control exists between the entities. Even in the absence of shared corporate structures or administrative functions, "the new facility may still be considered to be under the control of the existing source if a significant number of the indicators point to common control." Spratlin letter, at 2.

After review of the Agreement and Amendment, the District finds that several of the screening questions in the EPA guidance can be answered in the affirmative, and thus are indicative of common control. These include the following:

- Does one operation support the operation of the other? Yes- Hanson Santee is essentially operating as the excavation operation for the Sycamore Landfill. This is reflected in the terms of the Agreement and Amendment. The Landfill Development Agreement provides, "The parties desire to enter into an arrangement whereby [Hanson Santee's predecessor] will cause the Material to be removed from the Property… in a manner consistent with [Sycamore's] needs to develop the Property as a landfill, and the Aggregates to be marketed…." Agreement at page 1, Recitals- section D. The Amendment provides, "It is a material term and condition of this Agreement that Hanson excavate sufficient… Material… to meet the excavation schedule and adhere to the Mining Plan set forth in Exhibit F to this Amendment. This is necessary to enable [Sycamore] to prepare additional air space for disposal at the landfill." Amendment at section I(f)(a), (emphasis added).

- What are the financial arrangements between the two entities? The financial arrangements are mutually beneficial. As you note in your letter, it is not unlawful to engage in a mutually beneficial contract; however it can indicate common control, as it does here. Under the Agreement, Hanson Santee has an exclusive license to extract the aggregates on the site. Agreement at section I.(1.1)(a). Under the Amendment, Hanson Santee provides a minimum production royalty to Sycamore Landfill, and pays royalties based upon the aggregate it is able to sell. Amendment section 1(c). Under the Agreement, Sycamore Landfill was required to pay an Extraction Fee per cubic yard of material removed. This fee is no longer required under the terms of the Amendment. Agreement section I(4); Amendment section 1(d).

- What are the contractual arrangements for providing goods and services? The Amendment provides that Hanson will extract materials as specified in the Mining Plan and Excavation Schedule in order to create the space for the landfill. Amendment section I(f)(a), Exhibit F. If Hanson Santee fails to

comply with the established schedule, Sycamore Landfill may hire another contractor at Hanson Santee's expense. Amendment at I(j).

- Do the facilities share intermediaries, products, byproducts, or other manufacturing equipment? Hanson Santee is also required to deposit the "fine materials" byproduct to an area specified by Sycamore Landfill. Agreement section I(6.3); Amendment section I(i). Fine Materials are defined in the Amendment as the portion of excavated material that is not composed of saleable aggregate. According to the Joint Technical Document for Sycamore Landfill, approximately 60% by volume of the excavated material (i.e. the fine materials) is being supplied to Sycamore Landfill for daily cover, and this is projected to supply 100% of the landfill's daily and final cover needs. 2015 Joint Technical Document for Sycamore Landfill at 6-1 and 6-2. There is no fee for this material in the Agreement or Amendment.

Based upon the above answers to these screening questions, Hanson Santee and Sycamore Landfill are under common control. Hanson Santee provides all of the excavation for the Sycamore Landfill, in addition to all of the soil for the daily and final cover. Sycamore Landfill can control the location and the amount of materials to be removed from the site, in order to develop the Landfill. While Hanson Santee benefits from being able to sell the aggregates it produces, this does not detract from the considerable control over its operation under the terms of the Agreement and Amendment.

Additionally, EPA screening also looks for a contract-for-service relationship as evidence of common control. An EPA policy guidance letter on the treatment of temporary and contracted operations at stationary sources instructs that, "temporary and contractor-operated units be included as part of the source with which they operate or support." Letter from John Sietz, Chief of the Office of Air Quality Planning and Standards to the Minnesota Pollution Control Agency, November 16, 1994). Additional EPA guidance provides, "a determination of common control may be made on the basis of ... indirect control, such as when the goods or services provided by a co-located, contract-for-service entity are integral to or contribute to the output provided by a separately owned or operated' activity with which it operates or supports." Haber letter, at 3.

In this case, Hanson Santee's excavation operation is integral to the operation of the landfill. While a contractor was brought on to supplement the excavation in 2014, this does not detract from the fact that Hanson Santee is the primary provider of excavation services to Sycamore Landfill. In fact, under the initial Agreement, Hanson's

predecessor was paid an "Extraction Fee" per cubic yard of material removed to perform this service. Agreement at section I(4). And as noted above, Hanson Santee must comply with the Mining and Excavation Schedule established by the Amendment. If Hanson Santee does not comply with the excavation schedule, Sycamore Landfill "may, at its sole option and discretion, hire a third party contractor at the expense of Hanson to reach the level of Adequate Progress." Amendment at section I(j) (emphasis added). This is clear evidence of contract-for-service arrangement, and as such, common control.

II. Hanson Santee must be aggregated with the Sycamore Landfill because they meet the definition of a single stationary source under federal Title V regulations.

As you correctly noted in your letter, the federal definition of stationary source has a three-prong test.[2] For purposes of Title V permitting, federal regulations define major source as one or more stationary sources that: 1) are located on contiguous or adjacent properties; 2) are under common control of the same person or persons under common control; and 3) have the same two-digit Standard Industrial Classification ("SIC") code. 40 Code of Federal Regulations §70.2. As discussed above, Hanson Santee and Sycamore Landfill operate on the same parcel, and are under common control by virtue of the contractual relationship between them. They also can be considered to be under the same SIC code, since Hanson Santee is operating as a support facility to Sycamore Landfill.

A. Hanson Santee is operating as a support facility to Sycamore Landfill, and as such can be considered to be operating under the same SIC code.

As discussed above, Hanson Santee supports the operation of the Sycamore Landfill by providing excavation services to develop the landfill as well as the fine materials needed for the daily and final cover for the landfill per the terms of the Agreement and Amendment. EPA guidance provides that "a support facility is considered to be part of the same industrial grouping of that as the primary facility it supports even if the support facility has a different two-digit SIC code." Letter from Robert B. Miller, Chief, Permits and Grants Section, to William Baumann, dated August 25, 1999. A support facility relationship is presumed to exist when more than 50 percent of the output or services that are provided by one facility is dedicated to another facility

[2] The District's Title V Rules including this definition were approved by EPA initially on February 5, 1996. As a result, it is the District definition of stationary source that would govern this determination. Regardless, as further discussed herein, the Hanson Santee and Sycamore Landfill operations would be aggregated under either definition.

that it supports. Letter from Kathleen Anderson, Chief, Air Permits and Technical Review Branch, to Sharon G. Foley, dated October 22, 2009. In this case, 100% of Hanson Santee's excavation operation is dedicated to excavation of the Sycamore Landfill, and this operation provides 100% of the daily cover needed for the landfill.

Furthermore, additional factors may be considered in determining whether a support facility relationship exists. Support facility determinations can also depend upon the following:

- The degree to which the supporting activity receives materials or services from the primary activity (which indicates a mutually beneficial arrangement between the primary and secondary activities);
- The degree to which the primary activity exerts controls over the support activity's operations;
- The nature of any contractual arrangements between the facilities; and
- The reasons for the presence of the support activity on the same site as the primary activity (e.g. whether the support activity would exist at that site but for the primary activity).

Miller letter, at 2.

As discussed above, it is clear from the review of the Agreement and Amendment that Hanson Santee receives the ability to mine aggregate for sale, Sycamore Landfill exerts complete control over the location and amount of materials to be removed, and Hanson Santee would not be located upon this property were it not for its role in excavating the space for the Sycamore Landfill. As such, it is a support facility to the Sycamore Landfill and can be considered to be operating under the same two-digit SIC code as Sycamore Landfill.

B. The support facility concept is not limited to permitting decisions under the Prevention of Significant Determination ("PSD") program.

Contrary to the assertion in your letter, the support facility concept is not limited to permitting under the PSD program. The EPA letter to John D. Lowe referenced in your letter simply does not specify as such. While the concept was initially described in the preamble to the PSD regulations, it has subsequently been referenced in many EPA determinations related to Title V permits. See Haber letter, November 27, 1996 at 1; Anderson letter, October 22, 2009 at 3; and (most recently) Letter from Kenneth Moraff, Director, Office of Ecosystem Protection to Douglas L. McVay, dated March 25, 2016 at 3, 4.

Conclusion

Based upon its analysis of the factors discussed above, the District finds that the Hanson Santee operations at the Sycamore landfill must be aggregated with the emissions of the landfill itself, because Hanson Santee is essentially operating as the excavation operation for the Sycamore Landfill, and provides the daily cover materials for the landfill. As such, Hanson Santee should have submitted a Title V permit application within 12 months of commencing operation at that location. District Rule 1414(c). The District sent notice of the Title V permit requirement to your client on March 11, 2016. Under even the most generous reading of District Rule 1414, an application for Hanson's Title V permit was due to the District by March 11, 2017. Further delay in submittal of the application will put your client at added risk for District, federal or citizen enforcement.

Please contact me with any questions you may have.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By
Paula Forbis, Senior Deputy

Clean Power Plan (CPP) Litigation Updates and Road Ahead

A&WMA's 110th Annual Conference & Exhibition
Pittsburgh, Pennsylvania
June 5-8, 2017

Panel Extended Abstract # 260246

Rahul P. Thaker, P.E., QEP
NCDEQ Division of Air Quality, 217 West Jones Street, Raleigh, NC 27603

INTRODUCTION

The United States Environmental Protection Agency (EPA) promulgated Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units [EGUs], commonly known as Clean Power Plan [CPP], on October 23, 2015 (80 FR 64662) in accordance with §111(d) of the Clean Air Act (CAA).

Various challenges to this rule were filed with the courts on a number of issues.

On February 9, 2016, the Supreme Court of the United States (SCOTUS) stayed the implementation of the CPP, pending disposition of the challenges to the merits of the rule by the US Court of Appeals Court for the District of Columbia Circuit (USDC) and disposition of a writ of certiorari, if such writ is sought from the SCOTUS.

On September 27, 2016, all active judges of the USDC heard initial and final arguments (en banc review) on a number of issues: statutory issues, Section 112 issues, constitutional issues, notice issues, and record-based issues. This direct en banc review has been deemed unprecedented by the court observers, considering that the court initially hears any case via a randomly selected 3-judge panel. Only after the completion of this initial review (3-judge panel), the court reviews any petition for an en banc review on a particular case.

The decision from the USDC court is expected by early 2017. In addition, it is expected that the losing party generally would file a writ of certiorari to the SCOTUS.

With respect to EPA, states are not required to work towards any state plans and they have no obligation to spend resources to comply with the CPP, as per the EPA Administrator's letters to various Governors.[1]

In addition, on March 28, 2017, President Trump issued an Executive Order on "Promoting Energy Independence and Economic Growth", directing EPA to review the final rules in CPP and, if appropriate, suspend, revise, or rescind the rule, through federal register (FR) public

[1] See for example, letter from E. Scott Pruitt, EPA Administrator to Matt Bevin, Governor of Kentucky, March 30, 2017.

notice and comment process. The EPA Administrator announced on April 4, 2017, the initiation of review of CPP through FR notice. Separately, the US Department of Justice (DOJ) on March 28, 2017, on behalf of EPA, noticed the USDC, requesting this court to keep the CPP litigation in abeyance while the agency conducts its review of CPP. Finally, if the rule is ultimately upheld by the courts, the new Trump administration is also likely shape the implementation of the CPP and could revise the rule.

Knowing all of the above, it is apparent that the clarity and finality on CPP litigation and its implementation is probably months to a year or more away.

OBJECTIVE

This panel session will include presentations/discussions on litigation updates and the possible road ahead for everyone involved in the implementation of CPP. Specifically, the speakers will discuss the upcoming USDC decision and how it affects the states. The speakers are also expected to discuss any writ to the SCOTUS (if a writ was granted) and its resulting effects. Moreover, the panel will explore potential changes in the EPA's position and direction, related to the regulation of CO_2 emissions from power plants under the administration of President Trump.

PANEL MEMBERS

The expert panel will include four speakers. Some of them are expected to be the some of the same attorneys who had argued the case before the USDC and / or helped obtain a stay from the SCOTUS. They will be from EPA or US Department of Justice, state agencies, and private law firm attorneys, providing perspectives of EPA, states, industry, and environmental petitioners.

They are as follows:

- Mandy Gunasekara (Invited)
  Senior Policy Advisor, Office of the Administrator, EPA, Washington, D.C.

- Tauna M. Szymanski
  Senior Attorney, Hunton & Williams, Washington, D.C.

- Sean Donahue (Invited)
  Donahue & Goldberg, LLP, Washington, DC

- State Environmental Agency Representative

SUMMARY

The information provided by this high-level panel is expected to bring out discussions on litigation outcomes and provide insights on possible road ahead for the States, considering the new administration. It is the panel's sincere wish to better educate the attendees regarding various issues with this complicated regulation.

ACKNOWLEDGEMENTS

The author expresses his gratitude to John C. Evans from the North Carolina Division of Air Quality, for reviewing and critiquing this abstract.

REFERENCES

1. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 FR 64662 (October 23, 2015).

2. West Virginia, et al. v. EPA, No. 15A773, Order in Pending Case, Approving the Application for a Stay of the EPA's Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (October 23, 2015), SCOTUS, Washington, D.C, February 9, 2016.

3. State of West Virginia v. EPA, No. 15-1363, Order (scheduling the arguments format, time and location - Courtroom 20 at 9:30 AM on Tuesday, September 27, 2016), USDC, Washington, D.C. August 17, 2016.

4. State of West Virginia v. EPA, No. 15-1363, Parts I and II Oral Argument Recordings, USDC, https://www.cadc.uscourts.gov/recordings/recordings.nsf/DocsByRDate?OpenView&count=100&SKey=201609.

5. Presidential Executive Order on Promoting Energy Independence and Economic Growth, The White House Office of the Press Secretary, March 28, 2017, https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1.

6. State of West Virginia v. EPA, No. 15-1363 (and consolidated cases), in the USDC, Notice of Executive Order, EPA Review of Clean Power Plan and Forthcoming Rulemaking, and Motion to Hold Cases in Abeyance, US DOJ, March 28, 2017.

7. Review of the Clean Power Plan, 82 FR 16329 (April 4, 2017).

KEYWORDS

Clean Power Plan, CPP, 111(d), State Plan, Clean Air Act, CAA, US Appeals Court for the District of Columbia, USDC, Supreme Court of the United States, SCOTUS, Trump Administration, Trump EPA, EPA.

Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: December 27, 2016.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–08644 Filed 4–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0096; FRL–9961–55–Region 9]

Approval of California Air Plan Revisions, Eastern Kern Air Pollution Control District and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Eastern Kern Air Pollution Control District (EKAPCD) and Imperial County Air Pollution Control District (ICAPCD) portions of the California State Implementation Plan (SIP). These revisions were submitted by the California Air Resources Board (CARB) in response to EPA's May 22, 2015 finding of substantial inadequacy and SIP call for certain provisions in the SIP related to affirmative defenses applicable to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or the Act).

DATES: Any comments must arrive by May 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0096 at *https://www.regulations.gov,* or via email to Andrew Steckel, Rulemaking Office Chief at *Steckel.Andrew@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, vineyard.christine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. What action is the EPA proposing today?

The EPA is proposing to approve revisions to the California SIP. The revisions will remove from the EKAPCD and ICAPCD portions of the California SIP provisions related to affirmative defenses that sources could assert in the event of enforcement actions for violations of SIP requirements during SSM events. Removal of the affirmative defense provisions from the SIP will make the EKAPCD and ICAPCD portions of the SIP consistent with CAA requirements with respect to this issue. EKAPCD and ICAPCD are retaining the affirmative defenses solely for state law purposes, outside of the EPA approved SIP. Removal of the affirmative defenses from the SIP is also consistent with the EPA policy for exclusion of ''state law only'' provisions from SIPs, and will serve to minimize any potential confusion about the inapplicability of the affirmative defense provisions in federal court enforcement actions. Table 1 lists the rules addressed by this proposal with the dates on which each rule was rescinded by the EKAPCD or ICAPCD and submitted by CARB in response to EPA's final action entitled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33839 (June 12, 2015), hereafter referred to as the ''SSM SIP Action.''

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Rescinded	Submitted
EKAPCD	111	Equipment Breakdown	11/10/16	12/06/16
ICAPCD	111	Equipment Breakdown	09/22/15	03/28/16

On January 12, 2017, the EPA determined that the submittal for EKAPCD Rule 111 met the completeness criteria in 40 CFR part 51 Appendix V, and on September 28, 2016, the submittal for ICAPCD Rule 111 was deemed complete by operation of law under 40 CFR part 51 Appendix V. The completeness criteria must be met before formal EPA review of the submittals for approvability in accordance with applicable CAA requirements.

II. What is the background for the EPA's proposed action?

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA published the final SSM SIP Action finding that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and called on those states to submit SIP revisions to address those inadequacies. 80 FR 33839. As required by the CAA, the EPA established a reasonable deadline (not to exceed 18 months) by which the affected states must submit such SIP revisions. In accordance with the SSM SIP Action, states were required to submit corrective revisions to their SIPs by November 22, 2016. The EPA's reasoning, legal authority, and responsibility under the CAA for issuing the SIP call to California can be found in the SSM SIP Action.

In the SSM SIP Action, the EPA determined that EKAPCD Rule 111 and ICAPCD Rule 111 include elements of an affirmative defense for excess emissions during malfunctions. Specifically, EKAPCD Rule 111 and ICAPCD Rule 111 contain affirmative defense provisions that preclude enforcement for excess emissions that would otherwise constitute a violation of the applicable SIP emission limitations. The EPA concluded that EKAPCD Rule 111 and ICAPCD Rule 111 operate to alter or affect the jurisdiction of federal courts in the event of an enforcement action, contrary to the enforcement structure of the CAA in section 113 and section 304. See 80 FR 33972 (June 12, 2015).

On March 28, 2016 and December 6, 2016, ICAPCD and EKAPCD, respectively, made submittals in response to the SSM SIP Action. As noted above, the EPA found these submittals complete on September 28, 2016 and January 12, 2017, respectively. In the submittals, EKAPCD and ICAPCD requested that EPA revise the California SIP by removing EKAPCD Rule 111 and ICAPCD Rule 111 in their entirety from the California SIP. This approach is consistent with the EPA's interpretation of CAA requirements for SIP provisions.

III. Why is the EPA proposing this action?

In the SSM SIP Action, the EPA made a finding of substantial inadequacy and issued a SIP call with respect to EKAPCD Rule 111 and ICAPCD Rule 111 pursuant to CAA section 110(k)(5). In response, CARB submitted SIP revisions requesting the EPA to remove EKAPCD Rule 111 and ICAPCD Rule 111 from the California SIP in their entirety. Affirmative defense provisions like these are inconsistent with CAA requirements and removal of these provisions would strengthen the SIP. This action, if finalized, would remove the affirmative defense provisions from the EKAPCD and ICAPCD portions of the EPA-approved SIP for California. The EPA is proposing to find that these revisions are consistent with CAA requirements and that they adequately address the specific SIP deficiencies that the EPA identified in the SSM SIP Action with respect to the EKAPCD and ICAPCD portions of the California SIP.

IV. Proposed Action

The EPA is proposing to approve the California SIP revisions removing EKAPCD Rule 111 and ICAPCD Rule 111 from the EKAPCD and ICAPCD portions of the California SIP. The EPA is proposing approval of the SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the CAA. The EPA is not reopening the SSM SIP Action in this action and is taking comment only on whether this SIP revision is consistent with CAA requirements and whether it addresses the "substantial inadequacy" of the specific California SIP provisions identified in the SSM SIP Action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve SIP submissions that comply with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state requests as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 29, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–08666 Filed 4–28–17; 8:45 am]

BILLING CODE 6560–50–P

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1363 **September Term, 2016**

EPA-80FR64662
EPA-82FR4864

Filed On: August 8, 2017

State of West Virginia, et al.,

Petitioners

v.

Environmental Protection Agency and E. Scott Pruitt, Administrator, United States Environmental Protection Agency,

Respondents

American Wind Energy Association, et al.,

Intervenors

Consolidated with 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432, 15-1442, 15-1451, 15-1459, 15-1464, 15-1470, 15-1472, 15-1474, 15-1475, 15-1477, 15-1483, 15-1488

BEFORE: Garland*, Chief Judge, and Henderson, Rogers, Tatel**, Brown, Griffith, Kavanaugh, Srinivasan, Millett**, Pillard, and Wilkins, Circuit Judges

O R D E R

It is **ORDERED**, on the court's own motion, that these consolidated cases remain in abeyance for 60 days from the date of this order. EPA is directed to continue to file status reports at 30-day intervals beginning 30 days from the date of this order.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

* Chief Judge Garland did not participate in this matter.

** A statement by Circuit Judges Tatel and Millett, concurring in granting further abeyance is attached.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1363 **September Term, 2016**

TATEL, *Circuit Judge*, and MILLETT, *Circuit Judge*, concurring in the order granting further abeyance:

The Supreme Court stayed the Rule under review here "pending disposition of the . . . petitions for review" in this court and, if certiorari were granted, in the Supreme Court. *West Virginia v. EPA*, 136 S. Ct. 1000 (2016). As this court has held the case in abeyance, the Supreme Court's stay now operates to postpone application of the Clean Power Plan indefinitely while the agency reconsiders and perhaps repeals the Rule. That in and of itself might not be a problem but for the fact that, in 2009, EPA promulgated an endangerment finding, which we have sustained. *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (*per curiam*), *aff'd in part and rev'd in part on other grounds*, *Utility Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014). That finding triggered an affirmative statutory obligation to regulate greenhouse gases. *See Massachusetts v. EPA*, 549 U.S. 497, 533 (2007) ("Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."). Combined with this court's abeyance, the stay has the effect of relieving EPA of its obligation to comply with that statutory duty for the indefinite future. Questions regarding the continuing scope and effect of the Supreme Court's stay, however, must be addressed to that Court.

LANDFILL DEVELOPMENT AGREEMENT

THIS LANDFILL DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of December 31, 2006, by and between SOUTH COAST MATERIALS COMPANY, a California corporation ("SCMC"), and SYCAMORE LANDFILL, INC., a California corporation ("SLI") and is made in reference to the following facts and understandings:

RECITALS

A. SLI, an affiliate of Allied Waste Industries, Inc., is a waste services company and owns approximately five hundred twenty (520) acres of property in San Diego, San Diego County, California (the "Property"). SCMC and its affiliates extract, process, sell, and market aggregates in and around San Diego County, California. SLI has identified approximately 324 acres of the Property (the "Property") to be developed as a landfill. The Property is more particularly described on Exhibit A.

B. The parties estimate that there are thirty four million two hundred thousand (34,200,000) cubic yards of material to be extracted from the Property (the" Material"). Of this Material, forty percent (40%) is estimated to be saleable aggregates (the "Aggregates") with the remainder being material that is not saleable aggregates.

C. The parties hold (or will submit and process applications, if necessary, to enable them to hold) the necessary permits, entitlements, and financial assurances (the "Entitlements") for SCMC or a third-party operator to extract and process the Material from the Property (the "Work"). The Entitlements are more particularly described in Section 7.

D. The parties desire to enter into an arrangement whereby SCMC will cause the Material to be removed from the Property over a period of seventeen (17) years in a manner consistent with SLI's needs to develop the Property as a landfill and the Aggregates to be marketed, all pursuant to the terms and conditions of this Agreement.

E. On December 31,2002, SCMC and SLI entered into a similar landfill development agreement to remove Material and market Aggregates for Phase I of the Property development. This agreement modifies the original understanding going forward.

AGREEMENTS

NOW, THEREFORE, in consideration of the agreements of the parties hereto, and intending to be legally bound hereby, the parties hereto agree as follows:

1. LICENSE.

1.1 Grant of License. SLI, for and in consideration of the royalties, covenants and agreements hereinafter expressed to be paid, kept and performed by SCMC, hereby grants and conveys to SCMC an irrevocable (subject to terms herein) license, for the term set forth herein, for each and all of the following purposes:

(a) The right to extract, process and/or remove all Material from the Property, exclusive as against any other aggregate processor other than any third-party operator hired by SCMC, as provided in Section 6.2;

(b) Subject to the Entitlements and all necessary and required governmental regulations and permits, (i) the right to drill, blast, extract, load, stockpile, crush, screen, mix, and/or process the Aggregates from the Property, exclusive as against any other aggregate processor other than any third-party operator hired by SCMC, as provided in Section 6.2, (ii) the right to construct and operate the necessary rock crushing and other rock processing plants on the Property, exclusive as against any other aggregate processor other than any third-party operator hired by SCMC, as provided in Section 6.2, (iii) the right to stockpile Material, saleable or not, on the Property, exclusive as against any other aggregate processor other than any third-party operator hired by SCMC, as provided in Section 6.2, and (iv) the exclusive right to sell, market, transport, and/or export the Aggregates from the Property.

(c) A non-exclusive limited right of access, ingress, and egress for not more than 380 vehicles per day over the Property for the purposes set forth herein and as shown on the Right-of-Way Map, attached hereto as Exhibit B;

(d) The right to conduct those activities reasonably necessary and related to those expressly stated in this Section 1.1, including those activities necessary to comply with the Entitlements or any other governmental regulations or permits.

1.2 SLI's Development Needs. Notwithstanding the license contained in Section 1.1, the parties acknowledge and agree that while this license is exclusive as against any other aggregate processor other than any third-party operator hired by SCMC, it is not exclusive as to SLI and SLI has the right to (i) access the property to supplement SCMC's work if necessary, including as needed excavation, extraction, drilling, blasting, etc., (ii) place liners in all or a portion of the Property, (iii) stockpile Material, or (iv) do any other activity reasonably necessary for SLI to timely and effectively operate its landfill according to its permits, all as provided in Section 6.2.

1.3 Interest in Real Property. The parties acknowledge and agree that the irrevocable license granted in Section 1.1 is an interest in real property in the nature of a profit à prendre in gross and as such is alienable, subject to Section 10.13, and shall be binding and enforceable as against SLI, its successors and assigns, and subsequent

purchasers and/or encumbrancers of the Property. This interest may be recorded with the County Recorders Office.

1.4 Right of Limited Entry. Nothing herein shall prevent SLI from entering the Property in connection with SLI's landfilling activities, including but not limited to entry to excavate, extract and/or stockpile Material, entry to place liners in all or a portion of the Property, or other necessary activities, all as provided in Section 6.2; provided that SLI gives SCMC prior notice and coordinates such activities with SCMC so as not to interfere with SCMC's operations within the Property.

2. TERM. The initial term of this Agreement shall commence on the date first given above and terminate on December 31, 2023. Subject to an exception granted SCMC pursuant to Section 9.6, SCMC agrees to complete this mining project in 17 years. As provided in Section 9.5, the term may be extended for additional phases on the Property.

3. PAYMENTS BY SCMC.

3.1 Permit Fee. Concurrently with the execution of this Agreement, SCMC shall pay SLI a permit fee in the amount of Four Hundred Thousand Dollars ($400,000).

3.2 Fixed Royalty. Fixed royalties shall be paid according to the following terms:

(a) Beginning January 2007, and continuing on a monthly basis for the duration of the Term of this agreement, SCMC shall pay SLI a fixed royalty payment in accordance with Exhibit E attached hereto. Said Exhibit specified the amount of Fixed Royalty to be paid to SLI during the first 24 months. Additional Fixed Royalties shall be paid to SLI in subsequent years throughout the entire Term. Said royalties shall be recalculated every two years using similar terms and conditions of value established during the first two year period, however, using an escalator of not less than 5 % per year for the remainder of the Term.

(b) Said payments are due on or before the 15th day of each month for which a fixed monthly royalty payment is due, beginning January 15, 2007.

3.3 Production Royalty.

(a) Subject to the adjustment provided in Section 3.3(b) or Section 5, SCMC shall pay a royalty of Forty- Six Cents ($0.46) per ton of Aggregates as a production royalty during the term of this Agreement (as adjusted, the "Production Royalty Rate"). Such royalties are due thirty-five (35) days after the end of the month in which Aggregates are removed from the Property.

(b) Beginning on January 1, 2007, until December 31, 2023, the Production Royalty Rate shall be adjusted in proportion to the greater of (i) the

increase in the CPI (as defined in Section 3.3(c)) or (ii) the increase in the PPI (as defined in Section 3.3(d)), in either case which has occurred during the review period, as the case may be.

(c) The term "CPI" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U) for San Diego, California, on the basis of 1982–84 = 100. If the format or components of the CPI are materially changed after the execution of this Agreement, the parties shall substitute an index which is published by the Bureau of Labor Statistics, or a similar agency, and which in the parties' judgment, is equivalent to the CPI in effect on the date of this Agreement.

(d) The term "PPI" means the United States Department of Labor, Bureau of Labor Statistics, Producer Price Index for Construction sand, gravel, and crushed stone (commodity code 13-21) on the basis of 1982 = 100. If the format or components of the PPI are materially changed after the execution of this Agreement, the parties shall substitute an index which is published by the Bureau of Labor Statistics, or a similar agency, and which in the parties' judgment, is equivalent to the PPI in effect on the date of this Agreement.

(e) Beginning January 1, 2008 and for the remainder of the Term, the Production Royalty Rate shall be adjusted in proportion to the greater of (i) the increase in CPI or (ii), the increase in PPI, or (iii) the year over year increase in selling price for all third party Aggregates produced or sold from the property.

3.4 Inspection of Books. SLI, or its authorized agent, shall have the right to inspect and make copies of all records made or kept by SCMC of all Material removed and all Aggregates produced and sold from the Property and SCMC shall have the duty to maintain all such records at its main office, 9229 Harris Plant Road, San Diego, California 92145, or at such other place as SCMC may reasonably designate. Said right of SLI may be exercised at the main office of SCMC or at such other places as SCMC may reasonably designate, at a location within a reasonable proximity from the Property, at all reasonable times and intervals and in such a manner as to not unduly interfere with SCMC's operations. Any and all information obtained by SLI or its authorized agent in connection with the inspection and copying of records of SCMC pursuant to this Section 3 shall at all times be kept in absolute confidence by SLI or such agent and not disseminated to any other party in any form or media, excepting dissemination (i) in litigation among the parties hereto or (ii) to the extent legally compelled by court order or legal process.

3.5 Saleable Aggregates. For clarification, the Production Royalty (Section 3.3) is only paid on Aggregates, which are those aggregates actually separated from the Material extracted from the Property and removed from the Property. Aggregates may not be stockpiled by SCMC in a manner that interferes with SLI operations

4. EXTRACTION FEE. SLI shall pay an Extraction Fee to SCMC of One Dollar and Eighty-five Cents ($1.85) per cubic yard of Material (saleable or not) excavated by SCMC per month during the term of this Agreement. Said Fee shall be increased by a minimum of 5% per year during the term extraction takes place. Such fee is due thirty-five (35) days after the end of the month in which Material is extracted. This extraction fee shall not be paid to SCMC for any extraction performed by SLI or its subcontractors. To the extent that Material not processed as Aggregates is extracted and the cost to SCMC to move such Material to its ultimate destination is greater than the cost to move Material to SCMC's regular processing site for Aggregates, SLI shall reimburse SCMC for such additional cost.

5. QUANTITY AND QUALITY OF MATERIALS. As stated above in Recital B, the parties estimate that there are thirty four million two hundred thousand (34,200,000) cubic yards of Material to be extracted by SCMC from the Property. Of the Material, forty percent (40%) is estimated to be Aggregates. The parties agree to meet on a (2) two-year basis to share information as to the quantity and quality of materials and to discuss to the extent that Material contains more or less than 40% Aggregate waste, SLI and SCMC shall be entitled to an equitable adjustment of the Production Royalty Rate on a going forward basis.

6. MINING.

6.1 Labor and Equipment. SCMC shall provide all labor, equipment, materials, and utilities to extract the Material and process the Aggregates, either by itself or through a third-party operator approved by SLI, such approval not to be unreasonably withheld. SCMC shall install sufficient equipment to process the Quantity of Material and Aggregates anticipated to be mined during the term. In the event, SLI requires SCMC to relocate any or all of the equipment sooner than January 1, 2022, SLI shall pay for a proratta share of the relocation expenses reduced on a straight-line depreciation over the first fifteen years of the contract period. The parties agree and acknowledge that Hanson Aggregates Pacific Southwest, Inc. ("HAPSW"), an affiliate of SCMC, is an approved third-party operator and no further consent of SLI is needed for HAPSW to perform those duties or undertake those obligations delegated to it by SCMC.

6.2 Mining Plan. As soon as practicable after the execution of this Agreement and from time to time thereafter, SCMC and SLI shall jointly prepare or update, as the case may be, a plan describing the extraction of Material from the Property (the "Mining Plan"). The Mining Plan shall be consistent with SLI's need to have the Property prepared for its eventual use as a landfill and with SCMC's need to extract Aggregates in an efficient manner. On or about September 1st of each year of the Agreement, SLI shall provide SCMC with copies of Landfill development plans detailing the specific location of Landfill development needed for the upcoming calendar year along with the Landfill development progression anticipated over the next five-year period. SLI'S plans shall include engineering estimates of Quantities of Material to be removed along with details regarding any and all permit limitation and/or restriction that would impact SCMC'S ability

to perform under this agreement. SLI and SCMC shall agree on a mining plan including Quantities of Material to be extracted during the upcoming calendar year. Any modifications to the plan(s) must be agreed upon by both parties. SCMC shall use the agreed upon mining plan to develop the anticipated Cost of Extraction ("Cost") for removing and processing Material during the upcoming calendar year. Said Cost shall be the sole responsibility of SCMC and shall include cost of transportation and disposal of fines into the Designated Fines Materials Conveyance Area. The Mining Plan may provide for, and nothing in this Agreement shall prohibit, SLI from the following activities: (i) excavation, extraction, drilling, and blasting of Material, (ii) placing liners in all or a portion of the Property, (iii) stockpiling Material, or (iv) doing any other activity reasonably necessary for SLI to timely and effectively operate its landfill according to its permits; provided, however, that (x) SLI will extract Material in such a manner as to preserve the Aggregates for extraction by SCMC at no additional cost to SCMC.

6.3 Removal of Fines. As part of its obligations under this Agreement, SCMC shall convey fine materials to the area designated on Exhibit C (the "Fine Materials Conveyance Area"). By mutual agreement of the parties, the Fine Materials Conveyance Area may be changed as part of updating the Mining Plan pursuant to Section 6.2. SLI shall remove fine materials from SCMC's stockpile located at the Fine Materials Conveyance Area at the discharge point of the conveyor head pulley and shall remove such fine materials at a rate consistent with SCMC's ongoing operations. SLI may request that fine materials be conveyed to a location other than the Fine Materials Conveyance Area. To the extent the location designated by SLI for conveying fine materials results in additional expense to SCMC, SCMC shall inform SLI of SCMC's additional capital costs and operating expenses, plus a reasonable profit margin on the cost of capital (the "SCMC Additional Costs"), and SLI agrees to reimburse SCMC for the SCMC Additional Costs. Such reimbursement may be handled as an adjustment to one (1) or more of the payments provided in Sections 3.2, ~~3.3~~, and 4. If SLI disputes or objects to the SCMC Additional Costs, SLI at its sole expense shall make its own arrangements to convey the fine materials to the desired location.

6.4 Progress Meetings. SCMC and SLI will meet no less than quarterly to review and, as necessary, update the Mining Plan. In addition, both parties shall meet on or before January 1, 2009 and on a minimum two-year interval thereafter to consider the terms and conditions of this agreement. Both parties will review the mining/landfilling schedules along with payment schedules and other pertinent matters relating to the agreement. Any changes to these terms shall be discussed then and modified/reconciled only if approved by both parties.

6.5 Mining Practices. SCMC shall work the Property in a good and workmanlike manner in accordance with accepted mining practices, including compliance with all applicable laws, ordinances, regulations and permits, and in compliance with MSHA, OSHA and Cal-OSHA requirements in addition to any other applicable mining or environmental law applicable to aggregate processing operations being performed on the Property by SCMC or its third-party operator.

6.6 Grading. At the end of the term of this Agreement, SCMC shall deliver to SLI the Property graded to within eighteen (18) inches, plus or minus six (6) inches, of SLI's grading plan previously delivered to SCMC. The grading plan is attached hereto as Exhibit D.

6.7 Weighmaster. The quantity of saleable Aggregates shall be determined by actual weight measured by scales operated by a weighmaster (Cal. Bus. & Prof. Code §§12700 et seq.) employed by SCMC. SLI's right to inspect SCMC's books described in Section 3.4 shall apply to this Section 6.7.

6.8 Extraction Reconciliation. An annual aerial survey will be performed to quantify extraction for purposes of reconciling to the monthly volumes. The cost of the annual aerial survey will be shared equally between SLI and SCMC.

6.9 Community Relations. The parties shall mutually agree upon and establish a community relations program that is similar in scope to the community relations program HAPSW has in place at HAPSW's Carroll Canyon operations. SCMC agrees that it will provide SLI with advance notice of any community relations activities, including any written or verbal community with the public regarding SCMC or its third-party operator's Work on the Property, and shall obtain SLI's approval prior to disseminating any written or verbal communications with the public, including but not limited to public officials, community groups, environmental groups and news organizations.

6.10 Mining Operator Annual Report. If necessary, SCMC shall complete the Annual Report for the State of California Department of Conservation and make payment of annual reporting fees.

6.11 Revegetation and Landscaping. SLI shall be responsible for site reclamation, including revegetation and landscaping. SLI's responsibilities shall extend to compliance with all conditions of approval that apply to site reclamation. In the event SCMC secures additional permits and approvals that require landscaping improvements not contemplated under this agreement, SCMC shall be responsible for installing and maintaining such landscaping improvements.

6.12 Blasting. Should SCMC determine blasting is required, it will be performed at industry standards and in compliance with all laws, rules, regulations and permit requirements, including any mitigation measures required as part of SLI's Mitigation Monitoring and Reporting Program under CEQA. SCMC shall be responsible for securing all necessary approvals and will provide SLI notice at least forty-eight (48) hours prior to blasting.

6.13 Repair and Restoration. Within ninety (90) days following completion of the Work on the final phase at the Property, SCMC shall restore the surface of the Property on which its equipment was stored or on which any structure was built or placed

on the Property by or on behalf of SCMC or its third-party operator to the condition it was in prior to the commencement of the Work, at SCMC's sole cost and expense. Said closure related activity shall include the removal of all processing equipment, stockpiles, foundations, and wiring from conduit, including any asbestos containing materials.

6.14 SLI Aggregate Needs. SLI anticipates purchasing in excess of 200,000 cubic yards of suitable Aggregate for purposes of constructing Landfill on the Property. SCMC agrees to provide SLI with the above-quantity and quality of Aggregate at a "best customer class" rate.

6.15 SCMC Disposal/Needs. In the event SCMC requires waste disposal services on the Property, SLI shall provide such services at a comparable discounted rate.

7. ENTITLEMENTS.

7.1 SCMC's Permits. SCMC, at its sole expense, has obtained or shall obtain the following permits related to its operation at the Property:

(a) Business license;

(b) Air permit;

(c) Storm water permit;

(d) Waste Discharge Requirement Order; and

(e) Health permit.

7.2 SLI's Permits. SLI, at its sole expense, has obtained or shall obtain the following permits related to the Property, or demonstrate an exemption:

(a) A Community Plan Amendment/Site Development Permit/ Planned Development Permit/Multi-Habitat Planning Area (MHPA) Boundary Adjustment LDR 40-0765 (the "City Approvals");

(b) A Section 1603 Streambed Alteration Permit from the California Department of Fish and Game; and

(c) Except as otherwise provided, all other Entitlements related to the Property and the transaction contemplated by this Agreement.

7.3 SMARA. If the Surface Mining and Reclamation Act of 1975 (Cal. Pub. Resources Code §§2710 et seq.) Applies to SCMC's activities on the Property, the parties agree that SLI shall process the application required by such act with expenses to be paid by SCMC.

7.4 Compliance with Law. The parties shall comply with all Federal, State and local statutes, ordinances, resolutions, mandates, orders, plans, regulations, guidelines, decisions or other administrative, legislative, judicial or executive rules governing their respective operations on the Property.

8. INDEMNITY; INSURANCE.

8.1 SCMC's Indemnity. SCMC, for itself, its successors and assigns, agrees to defend, indemnify and hold harmless SLI, SLI's successors and assigns, and SLI's agents, officers, directors, stockholders, servants and employees, from and against any and all claims, demands, damages, actions or causes of action at law or in equity, together with any and all losses, costs or expenses and attorneys' fees, in connection therewith or related thereto, for bodily injuries, death or property damage arising or in any matter growing out of the acts or omissions of SCMC, SCMC's employees, agents, contractors, subcontractors or other representatives.

8.2 SLI's Indemnity. SLI, for itself, its successors and assigns, agrees to defend, indemnify and hold harmless SCMC, SCMC's successors and assigns, and SCMC's agents, officers, directors, stockholders, servants and employees, from and against any and all claims, demands, damages, actions or causes of action at law or in equity, together with any and all losses, costs or expenses and attorneys' fees, in connection therewith or related thereto, for bodily injuries, death or property damage arising or in any matter growing out of the acts or omissions of SLI, SLI's employees, agents, contractors, subcontractors or other representatives.

8.3 SCMC's Liability Insurance. SCMC shall, at SCMC's sole cost, keep in force during the term of this Agreement a policy of commercial general liability insurance covering property damage and liability for personal injury occurring on or about the Property, with limits in the amount of at least Five Million Dollars ($5,000,000) general aggregate, Two Million Dollars ($2,000,000) per occurrence for injuries to or death of person, property damage, and with a contractual liability endorsement insuring SCMC's performance of SCMC's indemnity obligations of this Agreement. SCMC shall provide SLI with evidence of coverage within three (3) business days of SLI's request.

8.4 SLI Liability Insurance. SLI shall, at SLI's sole cost, keep in force during the term of this Agreement a policy of commercial general liability insurance covering property damage and liability for personal injury occurring on or about the Property, with limits in the amount of at least Five Million Dollars ($5,000,000) general aggregate, Two Million Dollars ($2,000,000) per occurrence for injuries to or death of person, property damage, and with a contractual liability endorsement insuring SLI's performance of SLI's indemnity obligations of this Agreement. SLI shall provide SCMC with evidence of coverage within three (3) business days of SCMC's request.

8.5 Workers' Compensation Insurance. SCMC shall maintain workers' compensation insurance in the amount required by law.

8.6 Waiver of Subrogation. SLI and SCMC each hereby waives any and all rights of recovery against the other, and against the partners, members, shareholders, directors, officers, employees, agents and representatives of the other, for loss of or damage to the property of a party or injury to a person to the extent such damage or injury is covered by proceeds received under any insurance policy carried by SLI or SCMC in force at the time of such loss or damage.

9. ADDITIONAL TERMS.

9.1 Liens and Notices of Non-responsibility. SCMC agrees to keep the Property at all times free and clear of all liens, charges and encumbrances of any and every nature and description done, made or caused by SCMC, and to pay all indebtedness and liabilities incurred by or for SCMC which may or might become a lien, charge or encumbrance; except that SCMC need not discharge or release any such lien, charge or encumbrance so long as SCMC disputes or contests the lien, charge or encumbrance and posts a bond sufficient to discharge such lien acceptable to SLI. Subject to SCMC's right to post a bond in accordance with the foregoing, if SCMC does not within thirty (30) days following the imposition of any such lien, charge or encumbrance, cause the same to be released of record, SLI shall have, in addition to SLI's contractual and legal remedies, the right, but not the obligation, to cause the lien to be released by such manner as SLI deems proper, including payment of the claim giving rise to such lien, charge or encumbrance. All sums paid by SLI for and all expenses incurred by it in connection with such purpose shall be payable by SCMC to SLI on demand with interest at twelve percent (12%) per annum starting from the date due until paid in full.

9.2 Taxes. SLI shall pay any and all taxes assessed and due against the Property before and after execution of this Agreement. SLI shall not be liable for any taxes levied on or measured by income or proceeds, or other taxes applicable to SCMC, based on payments under this Agreement or based upon the severance or production of Aggregates by SCMC from the Property. If there is an increase in real property taxes due to the granting of an exclusive license to SCMC for mining aggregates, the parties agree to share payment of such increase in an equitable manner.

9.3 Environmental Protection. SCMC shall take all reasonable pre-cautions to prevent the improper disposal or release of hazardous wastes and the pollution of air and water by SCMC's operations. Any facilities for employees established on the Property shall be operated in a sanitary manner. It shall be SCMC's sole responsibility to comply with all applicable environmental laws or regulations, subject to SCMC's right to contest the same. If SLI finds physical evidence that air, land, water quality, or other environmental damage has occurred or is about to occur due to SCMC's non-compliance with said environmental laws or regulations, SLI shall have the right, upon written notice to SCMC, to require SCMC or its contractors, agents, or assigns to cease, alter, or modify

immediately that portion of operations on the Property which is causing or is about to cause such air, land, water quality, or other environmental damage; and to direct SCMC in writing to take immediate action to correct or eliminate said damage or threat thereof. SCMC shall then, in consultation with SLI, review the operations to determine if additional actions are necessary to correct or eliminate such damage or threat and shall correct or eliminate the damage or threatened damage immediately, as may be required by SLI or any governmental agency. SLI's rights under this provision shall not release SCMC of its obligations hereunder, nor shall they constitute a waiver of SLI's rights as provided by this Agreement and/or by law. SLI shall be under no obligation to provide for any inspections as to environmental practices of SCMC or to take any responsibility whatsoever for SCMC's actions, it being agreed that compliance therefor is the sole responsibility of SCMC. Liability for any environmental or water quality damage that is caused by SCMC or its contractors, agents, or assigns, shall be borne by and at the sole expense of SCMC, which will be paid immediately upon demand. If SCMC fails or refuses to correct or repair within a reasonable time any environmental damage caused by SCMC's failure to comply with applicable laws or with any obligation or covenant of this Agreement after being directed to do so, then SLI shall have the right to contract with any qualified party to correct said condition, and SCMC shall pay to SLI on demand for all costs, including attorney's fees, of said correction or repair. Notwithstanding any other provisions of this Agreement, SCMC shall defend, indemnify and hold harmless SLI from any and all losses, damages, expenses, claims, demands, and civil or criminal liabilities or penalties; clean-up lawsuits and other proceedings; and all costs and expenses including damages, attorneys' fees, and disbursements which accrue to or are incurred by SLI, arising directly or indirectly from, or out of, or which are in any way connected with SCMC's acts or omissions which cause environmental or water quality damage as defined by noncompliance with federal, state or local regulations, orders, or laws; or which cause losses, damages, expenses, claims, demands, or civil or criminal penalties or sanctions to be incurred. SCMC agrees to store, transport, and dispose of any hazardous substances, and all hazardous wastes, as defined by any applicable state or federal law, in accordance with all local, state, and federal laws, including the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), regarding the same. SCMC shall not dispose of any hazardous wastes upon the Property. Further, SLI and SCMC acknowledge and agree that in the event mining wastes are regulated by CERCLA, or by any other statute, SCMC may dispose of such wastes on the Property provided SCMC complies fully with such laws and shall be solely responsible for any contamination or other environmental damage found on the Property resulting from SCMC's operations, including the cost of clean-up. At the end of each year, SCMC shall notify SLI of all hazardous substances and hazardous wastes and the quantities brought to, stored upon, used on, or transported from the Property. The provisions of this Section 9.3 are in addition to the other provisions of this Agreement and shall survive any termination or expiration of this Agreement.

9.4 Corporate Guarantees. Either party may request a guarantee from an affiliated corporation of the other party, such request not to be unreasonably refused.

9.5 Renewal for Additional Phases. As additional consideration to SCMC for its obligations under this Agreement, SLI hereby grants SCMC the exclusive right of first refusal to renew this Agreement on substantially similar terms for additional Materials of the Property beyond the Quantity described in Section 5.

9.6 Time Obligations. Time is of the essence in the performance of the obligations of this Agreement and is expected to be completed by SCMC in 17 years. The party responsible for performance of an obligation under this Agreement shall commence performance and thereafter diligently proceed with performance thereof to completion according to the timetables set forth herein. However, if a party is delayed in the performance of its obligation(s) hereunder by reason of, and only by reason of: (i) failure of the other party to perform its obligations contained herein by the time or times required (including any applicable cure periods); (ii) unusual or extreme weather, such as a 100-year flood event; (iii) war; (iv) acts of God; (v) governmental moratoria; (vi) insurrection; or (vii) labor disputes not in violation of any project labor agreement or similar agreement; then the time for completion of the performance shall be extended for a period equal to the length of such delay, if:

(a) Within the earlier of (i) three (3) calendar days after the party who asserts its performance is being delayed ("Promisor") becomes aware of such delay, and (ii) ten (10) calendar days after Promisor should have become aware of such delay through the exercise of reasonable diligence, Promisor gives notice in writing of the event causing such delay;

(b) Within 10 calendar days after the cessation of the event causing such delay, Promisor provides written notice to the other party of the duration of the delay and the corresponding extension request by Promisor, and describing such event, as well as how such event will affect the critical path for completion of the performance being delayed; and

(c) Promisor provides evidence to the reasonable satisfaction of the other party that such event delayed a portion of the work in the critical path and the duration of such delay.

9.7 SCMC Default.

(a) The occurrence of any of the following shall constitute a SCMC event of default (an "SCMC Event of Default"):

(1) The insolvency of SCMC or HAPSW;

(2) The filing of a voluntary petition in bankruptcy or any similar proceeding against SCMC or HAPSW;

(3) Filing of any involuntary petition in bankruptcy or any similar proceeding against SCMC or HAPSW which is not dismissed within sixty (60) days;

(4) Appointment of a receiver or trustee for SCMC or HAPSW which is not dismissed within sixty (60) days;

(5) Execution by SCMC or HAPSW of any assignment of all or any portion of its rights or obligations hereunder in violation of the provisions of this Agreement;

(6) Failure to commence the Work to be performed by SCMC or HAPSW as set forth in accordance with the provisions of this Agreement;

(7) Failure to prosecute the Work to completion in a diligent, efficient, workmanlike, skillful and careful manner in accordance with the provisions of this Agreement;

(8) Failure to pay required taxes when due (except that SCMC may delay payment thereof pending resolution of a legitimate dispute with respect to such taxes);

(9) Failure to maintain required insurance;

(10) Failure to perform any of its material obligations under this Agreement; or

(11) Repudiation or breach of any of the terms of this Agreement.

(b) An SCMC Event of Default shall not be deemed to have occurred if (i) such default is a default involving the payment of money and SCMC cures such event within a period of ten (10) days after receipt of written notice from SLI specifying the SCMC Event of Default; or (ii) such default involves a non-monetary obligation of the SCMC and SCMC commences a cure of such event within a period of ten (10) days after receipt of written notice from SLI specifying the SCMC Event of Default and thereafter diligently pursues such cure to completion in accordance with a schedule reasonably acceptable to SLI.

(c) Upon the occurrence of an SCMC Event of Default, SLI shall make every reasonable effort to mitigate its losses and damages hereunder. SLI shall retain all sums of money theretofore paid hereunder to SLI, and SCMC shall pay to SLI a sum of money equal to the cost of the Work for all Work performed hereunder by SCMC for which payments have not theretofore been made hereunder. SLI's only remedies for an SCMC Event of Default shall be those that are expressly set forth in this Agreement.

9.8 SLI Default.

(a) The occurrence of any of the following shall constitute a SLI event of default (an "SLI Event of Default"):

(1) The insolvency of SLI;

(2) The filing of a voluntary petition in bankruptcy or any similar proceeding against SLI;

(3) Filing of any involuntary petition in bankruptcy or any similar proceeding against SLI which is not dismissed within sixty (60) days;

(4) Appointment of a receiver or trustee for SLI which is not dismissed within sixty (60) days;

(5) Execution by SLI of any assignment of all or any portion of its rights or obligations hereunder in violation of the provisions of this Agreement;

(6) Failure to pay required taxes when due (except that SLI may delay payment thereof pending resolution of a legitimate dispute with respect to such taxes);

(7) Failure to maintain required insurance;

(8) Failure to perform any of its material obligations under this Agreement; or

(9) Repudiation or breach of any of the terms of this Agreement.

(b) An SLI Event of Default shall not be deemed to have occurred if (i) such default is a default involving the payment of money and SLI cures such event within a period of ten (10) days after receipt of written notice from SCMC specifying the SLI Event of Default; or (ii) such default involves a non-monetary obligation of the SLI and SLI commences a cure of such event within a period of ten (10) days after receipt of written notice from SCMC specifying the SLI Event of Default and thereafter diligently pursues such cure to completion in accordance with a schedule reasonably acceptable to SCMC.

(c) Upon the occurrence of an SLI Event of Default, SCMC immediately shall terminate performance of the Work and make every reasonable effort to mitigate its losses and damages hereunder; provided, however, in connection with such termination SCMC shall perform such acts as may be necessary to preserve and protect that part of the Work theretofore performed hereunder. SCMC shall retain all sums of money theretofore paid hereunder to SCMC, and SLI shall pay to SCMC a sum of money

equal to the cost of the Work for all Work performed hereunder by SCMC for which payments have not theretofore been made hereunder and costs of shut-down and demobilization. SCMC's only remedies for an SLI Event of Default shall be those that are expressly set forth in this Agreement.

9.9 Condemnation. If any part of the Property is condemned or otherwise taken under the power of eminent domain or conveyed in lieu of condemnation, SLI shall receive a portion of the award that may be paid in connection with any condemnation or taking of the fee interest in the Property and SCMC shall also receive a portion of the award representing the value of the unexpired term of this Agreement, if any. In addition, if any part of the Property is condemned or otherwise taken under the power of eminent domain or conveyed in lieu of condemnation, and the condemnation or taking materially and adversely affects SCMC's occupancy of the Property, SCMC shall have the right to terminate this Agreement.

10. GENERAL PROVISIONS.

10.1 Successors and Assigns. The terms, provisions and conditions of this Agreement as set forth herein shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

10.2 Counterpart or Duplicate Copies. This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

10.3 Execution of Additional Instruments. Each of the parties shall hereafter execute all documents and do all acts necessary, or reasonable in the opinion of any other party, to effect the provisions of this Agreement.

10.4 Entire Agreement. This Agreement contains the entire understanding and agreement between the parties and supersedes any prior understandings and agreements between them respecting the within subject matter.

10.5 Amendments. This Agreement may be altered or amended in whole or in part at any time by writing signed by all the parties.

10.6 Waivers. A waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by the breaching party either of the same or of another provision of this Agreement.

10.7 Governing Law. The laws of the State of California shall govern this Agreement.

10.8 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be found to be invalid,

void or unenforceable, the remaining provisions and any application thereof shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

10.9 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice at the following addresses as evidenced by the execution of the return receipt, or (ii) Three (3) business days after the date of posting by the United States Post Office:

To SLI	Sycamore Landfill, Inc. 8514 Mast Blvd. Santee, CA 92071 Attn.: Neil Mohr
With a copy to:	Allied Waste Services, Inc. 8364 Clairemont Mesa Blvd. San Diego, CA 92111 Attn.: Jim Ambroso
To SCMC	South Coast Materials Company Post Office Box 639069 San Diego, CA 92163 Attn.: President
With a copy to:	Hanson Building Materials America, Inc. 300 East John Carpenter Freeway, Suite 1645 Irving, Texas 75062 Attn.: General Counsel

Notice of change of address shall be given by written notice in the manner detailed in this Section 10.9.

10.10 Attorneys' Fees. In the event that any party brings any action or files any proceeding in connection with the enforcement of its respective rights under this Agreement, or as a consequence of any breach by any party of its obligations hereunder, the prevailing party in such action or proceeding shall be entitled to have all of its attorneys' fees and out-of-pocket expenditures paid by the losing party. As used herein, the term "prevailing party" shall mean the party to a suit who successfully prosecutes an action or successfully defends against it.

10.11 Recitals, Captions and Headings. The recitals of this Agreement are incorporated as part of this Agreement. The subject headings of the sections contained herein are inserted as a matter of convenience and for reference, and in no way define,

limit, extend, or describe the scope of this Agreement, or any provision hereof. No provisions in this Agreement are to be interpreted for or against any particular party because that party or his legal representative drafted such provision.

10.12 Number and Gender. The use of the singular in this Agreement includes the plural and the use of one gender includes the others whenever the context thereof so requires.

10.13 Assignment. This Agreement may not be assigned by either party except with the consent of the other party, which shall not be unreasonably withheld; provided, however, that a party may assign this Agreement to an affiliated entity under common ownership with that party upon thirty (30) days' written notice to the other party, but without the need to first obtain the other party's prior written consent.

10.14 Signatory Authority. Any person signing on behalf of any party hereto, hereby warrants and represents that he has authority to sign on behalf of such party, and that such signature is intended to create a valid and binding agreement between the parties and that no condition precedent exists as to the validity of such signature.

IN WITNESS WHEREOF, SCMC and SLI have caused this Agreement to be executed as of the date first above written.

SOUTH COAST MATERIALS COMPANY

By: _____

Name: MARK T LONA

Title: Asst Secretary

Date: 12/30/2006

SYCAMORE LANDFILL, INC.

By: _____

Name: James T. Ambrato

Title: District Vice-President

Date: 12/30/06

C:\My Documents\Jim\Work\Landfill dev agt.doc

EXHIBIT A

DESCRIPTION OF PROPERTY AND PROPERTY

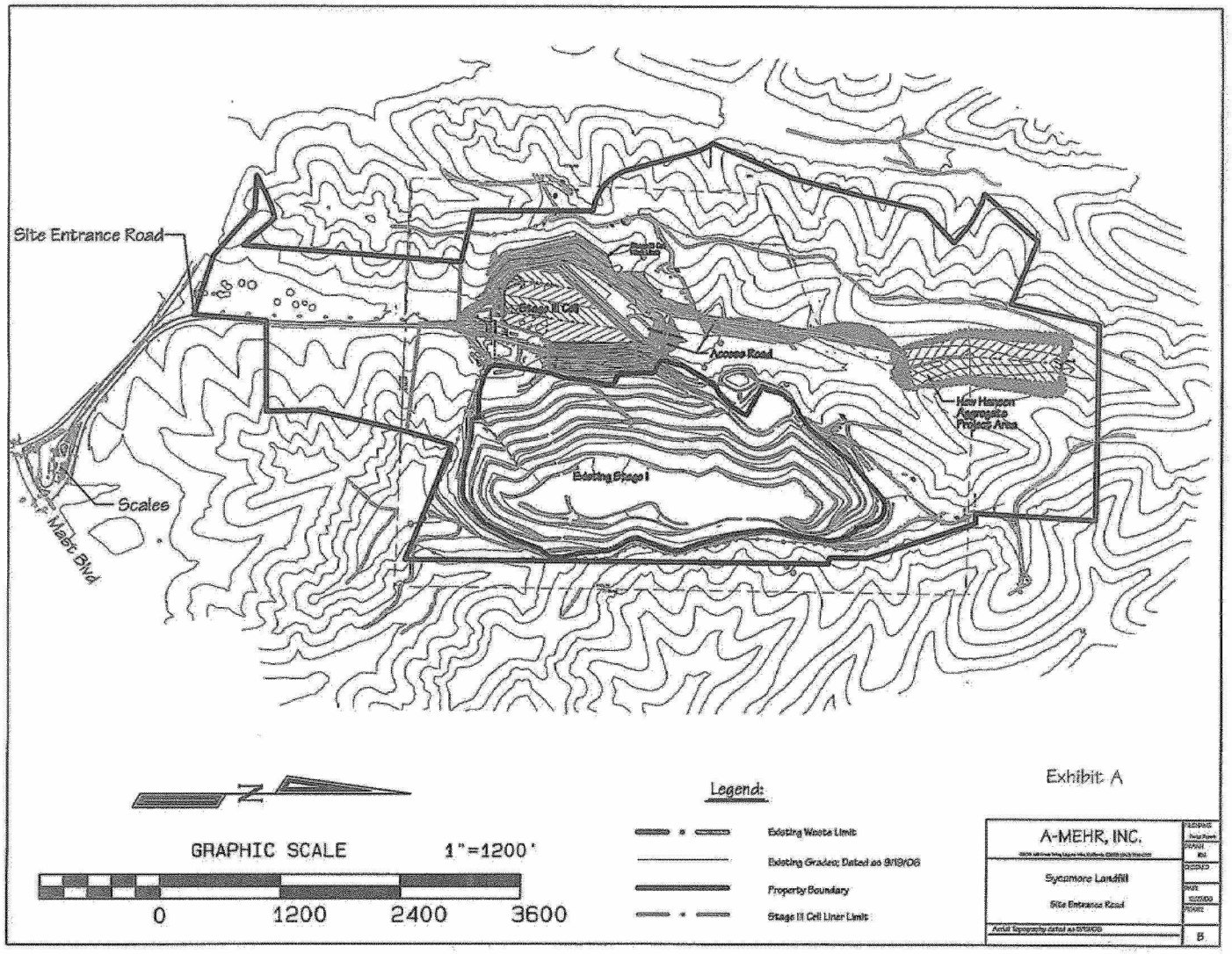

EXHIBIT A

Legal Description of Property

SYCAMORE LANDFILL (APN#s: 366-031-06, 366-031-11, 366-031-23, 366-031-24, 366-040-11, 366-040-17, 366-040-18, 366-040-33, 366-040-35, 366-040-36, 366-070-14, 366-070-61, 366-080-56)

Parcel 1 (73-0421):

Those portions of Lots 3, 4, 9 and 10 of the Resubdivision of Fanita Rancho, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1703, filed in the Office of the County Recorder of San Diego County, February 28, 1918, described as follows:

Beginning at the intersection of the center line of Road Easement No. 18 with the center line of Road Easement No. 19 as shown on Sheet 1 of 3 of Miscellaneous Map No. 488, filed in the Office of the County Recorder of San Diego County, May 3, 1966, being the Northwesterly corner of land described in Quitclaim Deed to William J. Walsh, et ux, recorded August 1, 1966 as File/Page No. 124858; thence along the center line of said Road Easement No. 18 South 00°06'37" West, 416.95 feet to an angle point in the boundary of said Walsh's land; thence along said boundary as follows; South 60°47'23" East 563.51 feet to the most Southerly corner of said land; North 39°19'09" East, 678.62 feet to the most Easterly corner of said land, and North 28°21'31" West 568.72 feet to the center line of said Road Easement No. 19, being a point on the arc of a 500.00 foot radius curve, concave Northwesterly, a radial line of said curve bears South 51°10'09" East to said point; thence along said center line as follows: Southwesterly along the arc of said curve, through a central angle of 16°20'41" a distance of 142.63 feet; tangent to said curve South 55°10'32" West, 260.47 feet to the beginning of a tangent 500.00 foot radius curve, concave Northerly; and Southwesterly along the arc of said curve, through a central angle of 40°11'07" a distance of 350.68 feet to the Point of Beginning.

Parcel 2 (73-0422):

That portion of Lot 3 of the Resubdivision of Fanita Rancho, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1703, filed in the Office of the County Recorder of San Diego County, February 28, 1918, described as follows:

Commencing at the intersection of the center line of Road Easement No. 18 with the center line of Road Easement No. 19 as shown on Sheet 1 of 3 of Miscellaneous Map No. 488, filed in the